

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2004-292-T - ORDER NO. 2005-54

FEBRUARY 7, 2005

IN RE:	Application of Loofar Enterprises, LLC d/b/a	)	ORDER GRANTING
	Apartment Movers, Etc., 40 Shanklin Road,	)	CLASS E CERTIFICATE
	Suite F, Beaufort, SC 29906 for a Class E	)	
	(HHG) Certificate of Public Convenience and	)	
	Necessity.	)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Application of Loofar Enterprises, LLC, dba Apartment Movers, Etc. (“Loofar” or the “Applicant”), 40 Shanklin Road, Suite F, Beaufort SC 29906. The Applicant requested a Class E Certificate of Public Convenience and Necessity to transport household goods as follows:

Household Goods, As Defined in R. 103-210(1):

Between points and places in Beaufort County and Jasper County to points and places in South Carolina and from points and places in South Carolina to points and places in Beaufort County and Jasper County.

The Commission’s Executive Director instructed the Applicant to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing was published and instructed the public as to how to file pleadings to participate in the proceedings on the Application. No Petitions to Intervene were received in this matter.

**APPLICABLE LAW**

1. S.C. Code Ann. § 58-23-20(Supp. 2004) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2004) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2004) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and

able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Regs 103-102(1)(Supp. 2004) defines "Certificate of PC&N" as

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Regs. 103-102(14) (Supp. 2004) defines "Common Carrier by Motor Vehicle" as "any person<sup>1</sup> which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

8. A "Class E Motor Carrier" is defined in 26 S.C. Regs. 103-114 (Supp.2004) as "a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a

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<sup>1</sup> 26 S.C. Code Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission.”

9. 26 S.C. Code Regs. 103-133 (Supp. 2004) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (l) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses.<sup>2</sup> If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant’s safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina and agree to operate in compliance with these statutes and regulations.

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<sup>2</sup> By Commission Order No. 1999-654, dated September 15, 1999, (Docket No. 1999-376-T), the Commission approved a waiver of the shipper witness requirement for those applicants seeking authority in three counties or less. In approving the waiver for these applicants seeking such a limited scope of authority, the Commission considered the difficulty faced by “small carrier” applicants in providing appropriate shipper witnesses. By Order No. 2000-024, dated January 5, 2000, (Docket No. 1999-376-T), the Commission clarified its decision from Order No. 1999-654 to specifically state that the waiver of the shipper witness requirement applied only to those applicants requesting authority to transport household goods between points and places in three, or less, contiguous counties.

- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to “fit and able,” the submitting of the application for operating authority would be sufficient demonstration of the applicant’s willingness to provide the authority sought.

10. 26 S.C. Code Regs. 103-134 (Supp. 2004) is entitled “When Hearing May Be Held” and provides in relevant part that “[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served.”

### **EVIDENCE OF RECORD**

Telephone depositions were taken from shipper witnesses Karen Golden and Mike Larsen in the offices of Ellis, Lawhorne & Sims, P.A. on January 19, 2005, beginning at 9:30 AM. Present for the depositions were John J. Pringle, Jr., Esquire, representing the Applicant, and Wendy B. Cartledge, Esquire, Shannon B. Hudson, Esquire, and L. George Parker representing the Office of Regulatory Staff (“ORS”).

Transcripts of the telephone depositions were obtained, filed with the Commission, and served on all parties prior to the Commission hearing.

A hearing on the Application was held on January 27, 2005, at 2:30 PM in the offices of the Commission. The Honorable Randy Mitchell, Chairman, presided. John J. Pringle, Jr., Esquire appeared representing the Applicant. Florence P. Belser, Esquire and Wendy B. Cartledge, Esquire, represented the ORS.

Reba L. Farris appeared and testified on behalf of the Applicant. Ms. Farris is the President of Loofar. Ms. Farris' husband, Edgar Farris, is also a principal and officer of the Applicant. Mr. Farris has previous experience in the trucking business. Ms. Farris testified that she, her husband, and her family had recently entered into the moving business. Ms. Farris stated that she felt that there was a need for an additional local moving company in the Beaufort area and would be operating Loofar as a franchisee of Apartment Movers, Etc. Ms. Farris testified that the Applicant was currently operating in the Beaufort area under the statewide authority held by K & K Investments d/b/a Apartment Movers, Etc. (the "Franchisor") and an equipment lease agreement. Ms. Farris testified that she and several other employees of the Applicant had received training and materials from the Franchisor with respect to running a household goods moving operation. Ms. Farris also provided evidence that Loofar had purchased vehicles, leased office space, and obtained equipment to begin operations, and had invested more than \$90,000 in furtherance of the enterprise. Further, the Applicant introduced into evidence a Certificate of Liability Insurance showing liability and cargo insurance coverage in excess of the minimum amounts required by the Commission's Rules.

As to the business operations of Loofar, Ms. Farris testified that Loofar intended to specialize in local and short notice moves. She stated that Loofar leases space in a large Beaufort building, and testified that she did not believe that Loofar would provide storage facilities in the foreseeable future. The record reveals that the Applicant has purchased two trucks for the purpose of providing moves, and that Loofar currently has five employees. Ms. Farris testified that the employees of the Applicant perform regular inspections and maintenance on these trucks, in conformance with state and federal law.

Ms. Karen Golden was a shipper witness for the company who testified through telephone deposition on January 19, 2005. She is currently employed as a realtor with Dunes Marketing Group, one of the largest real estate companies in the Beaufort County area. Ms. Golden indicated that to her knowledge there were not enough moving companies in the Beaufort County area. As a realtor, she is in a position to refer and/or work with her clients to locate a moving company, and stated that should the Commission certify Loofar, she would be in a position to refer moves to Loofar. Ms. Golden testified that there was sufficient demand for another moving company in the Beaufort County area and the market could support another household goods carrier serving Beaufort and Jasper counties. Her testimony supported the Applicant's claim that there is a need for the services they would offer.

Mr. Mike Larsen was another shipper witness for the company who testified through telephone deposition on January 19, 2005. He stated that he is the President of Carolina Moving & Storage. Mr. Larson indicated that his company can handle only about 80% of the prospective moves about which Carolina Movers receives calls, and on

occasion, he refers moves to other carriers. He stated he has referred moves to Loofar for moves in Beaufort and Jasper County in the past, and will do so in the future. Mr. Larsen stated that there are more moves taking place in Beaufort and Jasper County than in the past because of substantial growth. In his opinion, Mr. Larsen stated that Beaufort County was the fastest growing county in South Carolina. He testified that there was sufficient demand for another moving company in the Beaufort County area and the market could support another household goods carrier with authority in Beaufort and Jasper counties. His testimony supported the Applicant's claim that there is a need for the services they would offer.

There were no intervenors in this matter, and no testimony was offered in opposition to the Application.

Testifying on behalf of the ORS was the Director of the Transportation Division, Mr. George Parker. Mr. Parker testified that he had visited the Applicant's place of business in Beaufort and inspected the vehicles, which he described to be in excellent condition. Photographs taken by Mr. Parker of the location and vehicles were entered into the record of this case. Mr. Parker further testified that in his opinion the Applicant is "fit, willing, and able" to provide the services requested by means of the Application.

#### **FINDINGS OF FACT**

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant desires to provide moving services of household goods within and between points and places in Beaufort and Jasper Counties, from points and



places in Beaufort and Jasper Counties to points and places in South Carolina, and from points and places in South Carolina to points and places in Beaufort and Jasper Counties.

2. The Applicant is fit, willing, and able to provide and properly perform the services which it seeks to provide. “Fitness” has been demonstrated since the record contains (1) a certification that the Applicant, through its principals, is familiar with the regulations and statutes governing for-hire motor carrier services and (2) evidence that there are no outstanding judgments pending against the Applicant or its principals. “Able” was demonstrated by the evidence of record which reveals that the Applicant has the present ability to and has arranged for the necessary truck and equipment with which to perform moving services, and has obtained insurance which meets the minimum requirements set by this Commission, and has undergone an inspection of its equipment. The evidence of record also indicates that the Applicant’s principal owners possess sufficient financial resources necessary to conduct for-hire motor carrier operations in South Carolina. The filing of the Application and the testimony of the Applicant’s witness demonstrated “Willingness” and the Applicant’s desire to undertake this business venture in South Carolina.

3. The services proposed by the Applicant are required by the public convenience and necessity. We find that the witnesses presented on behalf of the Applicant establish that the public convenience and necessity warrant the issuance of the certificate requested by the Applicant. We find the evidence of public convenience and necessity provided by the Applicant to be credible.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that the Applicant has demonstrated that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Reg. 103-133 (Supp.2004).

2. The Commission concludes that the Applicant has sufficiently demonstrated that the public convenience and necessity requires its proposed services as reflected in its application.

3. Based on the conclusions above, that the Applicant has demonstrated that it meets the requirements of fit, willing, and able and that it has demonstrated that the public convenience and necessity require the services it proposes, the Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted and that the Applicant should be authorized to provide moving services within the following operating scope:

Household Goods, As Defined in R. 103-210(1):

Between points and places in Beaufort County and Jasper County to points and places in South Carolina and from points and places in South Carolina to points and places in Beaufort County and Jasper County.

This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

IT IS THEREFORE ORDERED:

1. That the Application of Loofar Enterprises, LLC d/b/a Apartment Movers, Etc for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved for authority to transport household goods between points and places in Beaufort County and Jasper County to points and places in South Carolina and from points and places in South Carolina to points and places in Beaufort County and Jasper County.

2. Loofar Enterprises, LLC d/b/a Apartment Movers, Etc. shall file with the Office of Regulatory Staff the proper insurance, safety rating, and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by 26 S.C. Regs. 103-100 through 103-241 of the Commission's Rules and Regulations for Motor Carriers, as amended, and 23A S.C. Regs. 38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate shall be issued by the Office of Regulatory Staff to Loofar Enterprises, LLC d/b/a Apartment Movers, Etc. authorizing the motor carrier services granted herein.

4. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. Failure of the Applicant either (1) to complete the certification process by complying with the Commission requirements of causing to be filed with the Office of Regulatory Staff proof of appropriate insurance and an acceptable safety rating within sixty (60) days of the date of this Order or (2) to request and obtain from the Commission additional time to comply with the requirements of the Commission as stated above, shall result in the authorization approved in the Order being revoked.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/  
Randy Mitchell, Chairman

ATTEST:

/s/  
G. O'Neal Hamilton, Vice Chairman

(SEAL)